

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 11

ROBINSON AVIATION (RVA), INC.  
Employer<sup>1</sup>

and

Case 11-RC-6705

PROFESSIONAL AIR TRAFFIC  
CONTROLLERS ORGANIZATION, INC.  
(PATCO)

Petitioner<sup>2</sup>

and

PROFESSIONAL AIR TRAFFIC  
CONTROLLERS ORGANIZATION, A/W  
FEDERATION OF PHYSICIANS AND  
DENTISTS, NATIONAL UNION  
HEALTH AND HOSPITAL CARE  
EMPLOYEES, AFSCME, AFL-CIO  
Intervenor<sup>3</sup>

**REGIONAL DIRECTOR'S DECISION AND**  
**DIRECTION OF ELECTION**

The Employer provides aviation support services pursuant to a contract with the Federal Aviation Administration (FAA) at various locations throughout the southeast

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<sup>1</sup> The Employer did not appear at the hearing. The name of the Employer appears as set forth in the joint stipulation entered into by the Employer, Petitioner, and Intervenor prior to the hearing.

<sup>2</sup> Record testimony established that employees participate in the Petitioner's organization by attending meetings and conventions and voting on internal union elections, constitutional and bylaw amendments and the selection of officers. The testimony further established that the Petitioner exists for the purpose of dealing with employers concerning conditions of work, grievances, labor disputes, wages, rates of pay and hours of employees. Accordingly, I find that Petitioner is a labor organization within the meaning of Section 2(5) the Act.

<sup>3</sup> The name of Intervenor appears as proffered at hearing. The testimony established that employees participate in Intervenor's organization by attending local meetings, selecting local representation, making contract proposals, paying dues, and participating in the ratification of collective bargaining agreements. The testimony further established that Intervenor exists for the purpose of dealing with employers concerning the conditions of work, grievances, labor disputes, wages, rates of pay and hours of employment of employees. Thus, I find that Intervenor is a labor organization within the meaning of Section 2(5) the Act.

United States, including the Donaldson Center Tower in Greenville, South Carolina, the sole site involved herein. The Intervenor currently represents the Donaldson Center Tower employees. The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time air traffic control specialists employed by the Employer at the Donaldson Center Tower in Greenville, South Carolina. A hearing officer of the Board held a hearing and the parties filed briefs with me.

As evidenced at the hearing and in briefs, the parties disagree on the scope of the unit and specifically, whether a single facility unit is appropriate in light of an agreement between Intervenor and the Employer to merge the single facility unit at the Donaldson Center Tower into a nationwide bargaining unit. The Petitioner asserts that the Donaldson Center Tower employees, in the interest of providing employees the freedom of choice, should be found to be an appropriate single facility unit. The Intervenor asserts that the employees at the Donaldson Center Tower, in accord with their bargaining history as memorialized in a July 2008 written addendum to its master agreement with the Employer, are part of a nationwide unit composed of twenty-three geographically separate locations. Thus, the Intervenor asserts that the appropriate unit for any election is a nationwide unit. The Employer did not make an appearance at the hearing and thus, has not taken a position in this matter. The unit sought by the Petitioner has approximately four employees.

I have considered the evidence and the arguments presented by the parties. As discussed below, I have concluded that the evidence, including the contract between the Employer and Intervenor, their bargaining history, and their course of conduct, fails to

establish that prior to the addition of the July 2008 merger language to the master agreement that the Donaldson Air Tower facility was merged into a nationwide unit. Moreover, the evidence established that the timing of the addition of the merger language in July 2008 warrants a finding that the Donaldson Air Tower is an appropriate single facility unit.

To provide context for my discussion of the issue, I will first provide an overview of the Employer's operation and the bargaining relationship between the Employer and Intervenor. Then I will present in detail the facts and reasoning that supports my conclusion that the air traffic control specialists employed at the Donaldson, South Carolina, Air Traffic Control Tower are an appropriate single facility unit.

### **I. Overview**

The Employer contracts with the Federation Aviation Administration (FAA) to provide air traffic control services at air traffic control towers located in the southeast United States. The Employer employs air traffic control specialists, who are trained and certified by the FAA to work at a specific tower location. Air traffic control specialists are responsible for air traffic movements within a specified altitude and geographic range surrounding their assigned tower. A tower manager supervises the air traffic control specialists. The air traffic control specialists work varied hours/shifts as dictated by the airport, traffic volume, and needs of airport management. As a result of the site-specific training of employees, as well as the geographic distance between the towers, transfers among the various towers rarely occur and are limited to extreme emergencies, and there is no employee interchange among the towers.

Since at least 1998, and most recently by a master collective bargaining agreement (master agreement) effective by its terms for a period of forty-two (42) months commencing on September 30, 2005, the Employer has recognized Intervenor as the exclusive collective bargaining representative of employees employed at various air traffic control tower facilities listed in the master agreement.<sup>4</sup> In the recognition clause, the master agreement at Article 2, Section 1 provides that the Employer recognizes Intervenor as the exclusive representative for the *bargaining units* listed in Annex A (emphasis added). Annex A, which, by agreement of the Employer and Intervenor, is routinely amended at various times to include new tower locations following certification by the Board or voluntary recognition by the Employer, lists twenty-three air traffic control towers at various geographic locations throughout the southeast United States, Puerto Rico, and the Virgin Islands.

On December 1, 2004, the Employer voluntarily recognized Intervenor as the bargaining representative of the air traffic control specialists employed at the Donaldson Air Tower in Greenville, South Carolina. At that time, the Employer and Intervenor revised Annex A, Annex C, and Annex D of the master agreement to include the Donaldson Air Tower facility in the master agreement, and to establish the wage rates, holidays, and vacation allowance for the employees employed at the facility.

On July 9, 2008 and July 14, 2008 respectively, the Employer and Intervenor executed a revision to Annex A to include the following language:

PATCO and RVA agree that, while PATCO was certified separately in each of these [the 23 named] locations by the National Labor Relations Board, or granted voluntary recognition by the employer, the employees at

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<sup>4</sup> The record is unclear as to when the Employer first recognized and began bargaining with Intervenor.

these locations have been merged into one bargaining unit. It is understood and agreed that if and when PATCO is certified by the NLRB as the collective bargaining agent, or granted voluntary recognition, for an additional facility or facilities, such facility or facilities will automatically be covered by the master agreement (except Annex B) and the employees at such facilities will be merged into this single bargaining unit.<sup>5</sup> Petitioner filed its Petition seeking an election among the air traffic control specialists located at the Donaldson Air Tower on July 21, 2008.<sup>6</sup>

## **II. Analysis**

### **A. Legal Standard**

In analyzing whether the Donaldson Air Tower is an appropriate single facility unit, I shall begin with the basic premise that an election to afford employees an opportunity to decertify or replace their bargaining representative is generally held in the certified or contractually-defined unit. *Mo's West*, 283 NLRB 130 (1987); *Campbell Soup Co.*, 111 NLRB 234 (1955). Notwithstanding this premise, however, the Board has long recognized a “merger doctrine” under which an employer and union can agree to merge separately certified or recognized units into one overall unit. *Wisconsin Bell*, 283 NLRB 1165 (1987). “It is axiomatic that parties to a collective bargaining relationship may, by contract, bargaining history, and a course of conduct, merge existing certified units into multiplant appropriate units.” *White-Westinghouse Corporation*, 229 NLRB 667, 672 (1977), citing *General Electric Company*, 180 NLRB 1094, 1095 (1970). However, “[t]he Board does not find a merger in the absence of unmistakable evidence that the parties mutually agreed to extinguish the separateness of the previously recognized or certified units.” *Utility Workers Union of America, AFL-CIO and its*

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<sup>5</sup> Annex B refers to the provision of lockers to employees in specified locations.

<sup>6</sup> Petitioner and Intervenor agree that there is no contract bar to the Petition.

*Locals Nos. 111, 116, 138, 159, 264, 361, 426, 478, and 492 (Ohio Power Company)* 203 NLRB 230, 239 (1973), enfd. 490 F.2d 1383 (6<sup>th</sup> Cir. 1974). Moreover, the Board has declined to apply the merger doctrine where the period of time between the filing of an election petition and the appearance of a merger was of “brief duration.” *West Lawrence Care Center*, 305 NLRB 212, 217 (1991). In *West Lawrence*, the Board found that “a brief identity as a multiemployer unit, balanced against the earlier long history of bargaining on an individual basis should not preclude the West Lawrence employees from voting within that a single-employer unit to determine whether they wish union representation and if so, by which labor organization.” 305 NLRB at 215.

In deciding if units have been merged, the Board looks to whether the parties intended the units to be merged into a larger unit. *Sears, Roebuck and Co.*, 253 NLRB 211 (1980)(no merger where the record fails to contain “unmistakable evidence that the parties mutually agreed to extinguish the separateness of the previously recognized or certified units”). To ascertain the parties’ intent, the Board weighs the factors evidenced in the contract, the bargaining history, and the course of conduct. See, e.g. *Duval*, 234 NLRB 160, 161 (1978)(no finding of merger where the parties failed to amend the recognition clause and engaged in departmental negotiations to set wage rates and lines of progression, for employees who had separate immediate supervision and no interchange); *Goodyear Tire and Rubber Co.*, 105 NLRB 674 (1953)(finding merged units where evidence of company-wide agreements containing substantive terms usual to a collective bargaining agreement, a prohibition against conflicting local supplements, participation of locals in the negotiation and execution of agreements, requirement of approval of companywide master agreement by a majority of employees, and the local’s

relegation to the employer and union of the right to effectuate changes companywide, outweighed the factors of the recognition's clause reference to "units," the local processing of grievances, plant seniority, and negotiation of local supplement agreements on limited issues); *General Electric*, 180 NLRB 1094 (1970)( factors which might tend to support a finding that bargaining has not been on a multiplant basis are outweighed by the long continuous bargaining history, and the manner of negotiation, execution, coverage, and application of the agreements between the parties).

In finding that the facts fail to establish "unmistakable" evidence of the intent of the Employer and Intervenor to merge the Donaldson unit into a multifacility unit, I have examined the contractual language of the master agreement, the bargaining history, and the course of conduct between the Employer and the Intervenor. I have concluded that the weight of the evidence supports a finding that a single facility unit is appropriate.

## **B. Application of the Legal Standard**

### **1. The Master Agreement**

In determining whether the contractual language negotiated by the parties reflects the intent to merge separate units, one indicator can be found in the language of the recognition clause and other provisions of the parties' collective bargaining agreement. In the current case, the recognition language is set out in Article 2, and Article 5 contains language describing the "coverage" of the master agreement. Article 2, Negotiations and Exclusive Recognition provides as follows:

#### **Section 1. The Union.**

The Employer recognizes the Professional Air Traffic Controllers Organization, a division and affiliate of the Federation of Physicians and Dentists/Alliance of Health Care and Professional Employees, NUHHCE, AFSCME, AFL-CIO as the exclusive

representative for the bargaining units listed in Annex A for the purpose of collective bargaining in all matters relating to wages, hours of employment, and other terms and conditions of employment for all employees in the bargaining units as determined by the National Labor Relations Board.

## Section 2. Union Representative

- (A) The Manager recognizes and agrees to work with the PATCO Facility Representative or his/her designee. In the absence of the primary Representative, the alternate Representative becomes the primary. The Facility Representative shall be the single point of contact on all matters between the Manager and the Union which are internal to the facility. The Employer further agrees to work with the National PATCO representatives on union-management issues external to the facility. The Union agrees to notify the Manager of whom its Facility Representative and alternate is and to notify the Manager of any changes.

Significantly, Article 2, Section 1, plainly refers to Intervenor as the exclusive representative for the bargaining units (plural) listed in Annex A. The parties also chose to refer to the master agreement as covering units (plural) when describing coverage of the agreement. Specifically, Article 5, Section 1 states, “This Agreement covers all full-time and part-time employees in the following classification and positions as described in the certifications of bargaining units issued by the National Labor Relations Board.” Similarly, in describing Union rights at Article 10, the title of Section 6 is “Bargaining Units.”<sup>7</sup> Notwithstanding these references to the units, however, throughout the remainder of the master agreement, when describing application of benefits provided by the master agreement, the language is framed in terms of application to a single bargaining unit.<sup>8</sup>

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<sup>7</sup> Although the Section 6 of Article 10 is titled in the plural, the body of the provision refers to the Employer providing the Union, semi-annually, with information concerning each member of the bargaining unit.

<sup>8</sup>In this regard, provisions of the master agreement addressing other terms and conditions of the air traffic control specialists refer to the unit in the singular. See Article 14, Section 7 (performance

Notwithstanding any ambiguity created by references both to the unit in the plural and in the singular in the master agreement, I find it instructive that Section 2 of the recognition clause grants employees the autonomy to negotiate and to deal directly with the Employer on the local level. In this regard, employees at each tower select a local representative who has the authority to negotiate a local agreement and to negotiate with the Employer concerning issues affecting local union conditions. While there is no evidence of the existence of any local agreements or any evidence concerning negotiations on local issues, locals have the authority to negotiate such agreements as long as the agreements or negotiations do not contravene the master agreement. The record establishes that local representatives are the first line of authority at the local level, with advice from the national if needed, for processing and settling local grievances and handling local union issues. If grievances are not resolved at the local level they are, in accord with the master agreement, processed to the National level.

Thus, in light of the ambiguity created by the references to “units” in the recognition language of the master agreement and to “unit” in other sections of the agreement, but noting the degree of local autonomy granted each certified or voluntarily recognized unit in the recognition language of the master agreement, I find that the master agreement fails to establish unmistakable evidence of intent to create a multilocation unit.

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appraisals), Article 14, Section 6 (position descriptions), Article 19, Section 3 (definition of grievance), Article 24, Section 2 (safe workplace), Article 27, Sections 1 and 2 (maintenance of clean work facility), Article 28, Section 1, 2, 3, and 4 (participation in surveys and questionnaires), Article 32 (employees performing the Controller-in-Charge duties), Article 34, Sections 5 and 6 (physical qualifications), and Article 35, Section 4 (facility evaluations).

## 2. Bargaining History

The bargaining history between the Employer and Intervenor also fails to establish that the parties possessed the requisite intent to merge the units into a multilocation unit. Most telling in this regard is the conduct of the parties throughout the course of their long bargaining history. The evidence established that the Employer and Intervenor have been bargaining since at least 1998. Yet, throughout these many years of negotiations, they did not amend the recognition clause to reflect the existence of a nationwide unit. Instead, as set out above, they continued to refer in the recognition clause and in Article 5 to “units.” See, *Duval*, 234 at 161 (“had the parties truly desired to create a large unit among all the employees subject to the contract, they could easily have described such a broad unit in the recognition clause”); *Goodyear Tire & Rubber*, 105 NLRB at 676. (a contract reference to units in the plural, in the recognition clause, among others, is a militating factor against finding a multiplant unit).

The 2005 master agreement was negotiated by National Field Representative Jerry Tusó and the Employer’s Vice-President of Operations, Wil Mowdy over the course of sixteen sessions. Of the sixteen sessions, air traffic controllers from various sites attended only three of the sessions.<sup>9</sup> Following negotiation of the master agreement, copies were provided to each tower location and each member for ratification. However, the record established that Intervenor utilizes an extremely informal telephonic ratification process wherein local representatives at each tower obtain a ratification decision in any manner they desire and then report the results to the National Union. Notably, only Intervenor’s national representative and the Employer’s Vice-President of

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<sup>9</sup> The record does not specify the locations represented in these three bargaining sessions or the extent of involvement of the site representatives.

Operations executed the master agreement. I find that the lack of input or participation of the Donaldson employees in the negotiation of the master agreement militates against finding of multilocation unit. See *White Westinghouse*, 229 NLRB 667, 672 (1977) (in finding merger, significant that negotiating conference board contained representation from employees in all plants represented by the union or its locals).

The evidence also established that as soon as the Board certified or the Employer voluntarily recognized the Intervenor as the representative of employees at a new geographic location, the Employer and Intervenor would revise an annex to the master agreement to add the new facility. Following this practice, the Employer voluntarily recognized Intervenor as the representative of its Donaldson Tower employees effective December 1, 2004, and immediately, in accord with Article 42 of the master agreement, revised Annex A, Annex C, and Annex D by applying the terms of the master agreement to the Donaldson employees.<sup>10</sup> Significantly, Annex C sets forth the wage rates applicable to the Donaldson, South Carolina location from October 2005 to October 2008 and Annex D specifies the holidays and the amount of vacation time afforded employees at the Donaldson, South Carolina location. In light of the addenda establishing separate wages, holidays, and vacation benefits for the employees, the addition of the Donaldson location to the master agreement, was more in line with centralized bargaining for a separate unit rather than negotiations for a multisite unit. In *Utility Workers*, 203 *supra* at 239, the Board affirmed the findings of the administrative law judge that “centralized bargaining for separate units, and the similarity of certain contractual benefits, is

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<sup>10</sup> Article 42 provides a procedure for voluntary recognition of Intervenor as the collective bargaining agent at an RVA air traffic control tower not currently certified by the Board.

insufficient evidence to warrant a finding that the parties have mutually agreed to merge established separate units.”

### 3. Course of Conduct

Intervenor testified that as a result of a prior Board decision arising in Detroit, Michigan, wherein the Board held that the language of the master agreement was insufficient to support the finding of a merged unit, it entered into negotiations with the Employer, between January 2008 and June 2008, to negotiate language to prevent raiding of its unit by other unions. As a result of these negotiations, the Employer and Intervenor, on July 9 and 14, 2008 respectively, executed a revision to Annex A to add language, as set forth more fully above, that “these locations have been merged into one bargaining unit....”

Intervenor testified that the addition of this language in Annex A was a “structural” change to the master agreement that required ratification by the membership. When questioned by the hearing officer as to what this meant, he testified that he should have stated it was a “restructuring.” Intervenor also asserts, however, that its understanding has always been that the unit was a national merged unit and that the addition of the merger language to Annex A was designed simply to memorialize that understanding.

Contrary to Intervenor’s assertion, I find the evidence insufficient to establish that the Employer and Intervenor intended to merge the various units at any time prior to July 2008. First, the evidence establishes that the parties negotiated over six months, beginning in mid-January 2008 and concluding in June or July 2008, before reaching an agreement to add the merger language to Annex A. The Employer and Intervenor, by

phone, fax, and email, exchanged proposals concerning the content of merger language. The reasonable inference is that, if the parties were simply memorializing an agreed-upon factual circumstance, that is, the historical existence of a merged unit, there would have been little need for much back and forth bargaining. Unfortunately, documents that reflect the content of these negotiations, which could clearly have revealed the positions of the parties on the historical unit, were, according to Intervenor, destroyed.

Second, the merger language does not, on its face, reflect a mere “memorializing” of prior conduct and understanding; rather the language simply states, “the employees at these locations *have been* merged into one bargaining unit.” (emphasis added). This language, at best, is ambiguous on the issue of the timing of the merger, and is reasonably interpreted as indicating that the merger was deemed effective upon execution of the revision.

Based on all of the foregoing, I find that, prior to July 2008, the record does not establish that the parties had agreed to merge the separate units into one multilocation unit. Rather, the Employer and Intervenor had simply engaged in centralized bargaining for the convenience of the parties. Having concluded that the July 2008 revision represented a structural change in the composition of the unit, in that no merger had taken place before that time, I now turn to the timing issue.

In *West Lawrence Care Center, Inc.*, 305 NLRB 212 (1991), the Board addressed the issue of whether a single employer unit was no longer appropriate because it had been merged into a broader unit by its attempted inclusion into a multiemployer unit. In declining to apply the unit merger doctrine to block an election in the single employer unit, the Board noted the lengthy substantial bargaining history as a single employer unit

as compared to the relatively brief history of bargaining as a multiemployer unit. *West Lawrence*, 305 at 217. The Board concluded that, in light of the brief multiemployer bargaining history, and considering the stability of the parties' collective bargaining relationship, the balance should be struck in favor of freedom of choice of the employees. Thus, the Board directed an election in the smaller, single employer unit. *West Lawrence*, 305 at 217.

Intervenor asserts in brief that the facts in the current case are consistent with those in *Albertson's, Inc.* 307 NLRB 338 (1992) in which the Board found that the brief existence of a unit as a single facility unit before being merged into a larger unit, when compared to its longer history of functioning in the merged unit, warranted dismissal of the petition. In this regard, Intervenor asserts that the Donaldson employees have always been included in a nationwide bargaining unit, have never been covered by a separate collective bargaining agreement, and, thus, do not have any history of bargaining in a single facility unit. However, unlike the facts in *Albertson's, Inc.*, the evidence in the current case establishes that, the Donaldson employees operated as a single facility unit for four years before the July 2008 merger agreement was negotiated. Given the brief merger history, then the balance, as in *West Lawrence*, must be struck in favor of providing employees with the freedom of choice to choose their collective bargaining representative.

Accordingly, I find that the record evidence, including the contractual language, the bargaining history of the Employer and Intervenor, and the course of conduct of the Intervenor, fails to provide unmistakable evidence of intent to merge the Donaldson unit into a multilocation unit prior to July 2008. I further find that the July 2008 merger is too

close in time to the filing of the petition to render the historical single facility unit inappropriate. Accordingly, I shall direct an election be held in the following unit:

All full-time and regular part-time air traffic control specialists employed by the Employer at its Donaldson Center Tower, located in Greenville, South Carolina; excluding, air traffic control managers, guards and supervisors as defined in the Act.

### **III. CONCLUSIONS AND FINDINGS**

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
5. Intervenor claims to represent certain employees of the Employer.
6. Intervenor is a labor organization within the meaning of Section 2(5) of the Act.
5. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time air traffic control specialists employed by the Employer at its Donaldson Center Tower, located in Greenville,

South Carolina; excluding, air traffic control managers, guards and supervisors as defined in the Act.

#### **IV. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Professional Air Traffic Controllers Organization, Inc. (PATCO), Professional Air traffic Controllers Organization, a/w Federation of Physicians and Dentists, National Union Health and Hospital Care Employees, AFSCME, AFL-CIO, or neither. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

##### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for

cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

#### **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **September 2, 2008**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted

to the Regional Office by electronic filing through the Agency website, [www.nlr.gov](http://www.nlr.gov),<sup>11</sup> by mail, or by facsimile transmission at 336/631-5210. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **three** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

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<sup>11</sup>To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlr.gov](http://www.nlr.gov).

## V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by September 8, 2008. The request may be filed electronically through E-Gov on the Board's web site, [www.nlrb.gov](http://www.nlrb.gov),<sup>12</sup> but may not be filed by facsimile.

**DATED:** August 25, 2008

/s/ Willie L. Clark, Jr.  
Willie L. Clark, Regional Director  
National Labor Relations Board  
Region 11  
P.O. Box 11467  
4035 University Pkwy  
Winston-Salem, North Carolina 27116-1467

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<sup>12</sup> To file the request for review electronically, go to [www.nlrb.gov](http://www.nlrb.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlrb.gov](http://www.nlrb.gov).